



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2003

Ms. Leona Clay
Administrative Assistant
Harker Heights Police Department
305 Miller's Crossing
Harker Heights, Texas 76548

OR2003-6613

Dear Ms. Clay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187953.

The Harker Heights Police Department (the "department") received a request for "all records with regard to [two specified] persons and/or address." You claim that most of the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure under the common-law right to privacy, which protects information that (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks the department to compile all information concerning two specified persons. To the extent the requestor asks the department to compile information about these persons, their common-law right to privacy is implicated. Thus, if the department maintains

records in which either specified person is portrayed as a suspect, defendant, or arrestee in a case, the department must withhold such information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See id.*

We note that the doctrine of common-law privacy also protects information pertaining to the identities of sexual assault victims. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. Based on our review of the information at issue, it appears that the requestor in this matter knows the identity of the alleged victim noted in one of the submitted incident reports. Thus, we believe that withholding only the alleged victim's identifying information from the requestor in this instance would not preserve the victim's common-law privacy interests. Accordingly, we conclude that the department must withhold the incident report that we have marked in its entirety pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We now address your claim regarding section 552.108 of the Government Code. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate, and the remaining submitted incident reports reflect, that the reports pertain to cases that have concluded in a

final result other than conviction or deferred adjudication. Thus, we find that section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department must generally release the types of information that are considered to be front page report information, even if this information is not actually located on the front page of the report. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(2) authorizes the department to withhold the remaining portions of these reports, the department may choose to release all or part of these reports unless such information is otherwise confidential by law. See Gov't Code § 552.007.

However, some of the basic information in one of the submitted incident reports implicates the common-law privacy interests of one of the persons specified by the requestor in his request. Accordingly, we conclude that the department must withhold the type of basic information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. See generally *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In summary, if the department maintains records in which either specified person is portrayed as a suspect, defendant, or arrestee in a case, the department must withhold such information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must withhold the sexual assault incident report that we have marked in its entirety pursuant to section 552.101 in conjunction with the common-law right to privacy. With the exception of most of the basic information, which must be released to the requestor, the department may withhold the remaining submitted reports pursuant to section 552.108(a)(2) of the Government Code. However, the department must withhold the type of basic information that we have marked in one of the submitted incident reports pursuant to section 552.101 in conjunction with the common-law right to privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

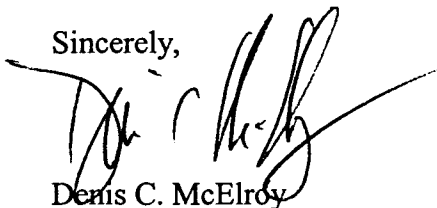
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RJB/lmt

Ref: ID# 187953

Enc. Marked documents

c: Ms. Barbara A. Weaver
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(w/o enclosures)